

JOANN M. JOSEPH)	
Claimant)	
VS.)	
)	Docket No. 1,029,471
COX COMMUNICATIONS)	
Respondent)	
AND)	
)	
NEW HAMPSHIRE INSURANCE COMPANY)	
Insurance Carrier)	

After reviewing the record compiled to date, the Board concludes the preliminary hearing Order should be affirmed. Judge Klein concluded claimant failed to satisfy her burden of proof. The Board agrees.

Claimant alleges a co-worker punched or elbowed her on the back of her right arm. The battery allegedly occurred on April 26, 2006. According to claimant, the force of the strike took her breath away. Nonetheless, claimant did not report the incident to anyone in a supervisory position until the next day. No one witnessed the alleged incident. And the person who is accused of striking claimant denies striking her.

The record indicates claimant sought medical treatment at the Via Christi Regional Medical Center emergency room on April 28, 2006. Although the hospital's notes are not very legible, they appear to indicate that claimant reported right arm pain, numbness, and coldness that started when a co-worker punched her in the arm. Those notes also indicated claimant was beginning to experience neck pain and back pain. Finally, the records indicate the emergency room nurse did not see any redness or bruising on the right arm.

In early June 2006, claimant eventually saw Dr. Robert L. Eyster. The doctor noted claimant had right trapezius muscular irritation, neck pain, and right shoulder pain. Dr. Eyster prescribed physical therapy for claimant's neck and medications. In a June 2, 2006, letter to Dr. Patricia Bledsoe, Dr. Eyster set forth his findings and recommendations. Dr. Eyster's letter, however, did not relate any of claimant's symptoms or her need for medical treatment to the alleged incident at work.

And in a letter to Dr. Bledsoe dated July 6, 2006, Dr. Eyster wrote that claimant's deltoid muscular pain was consistent with somebody striking the muscular region of the upper arm. That letter, however, did not indicate that claimant needed any medical treatment for that symptom.

Considering the entire record, the Board agrees with Judge Klein that claimant failed to prove she was struck at work by a co-worker and failed to prove her present need for medical treatment resulted from being struck in the back of her upper right arm.

WHEREFORE, the Board affirms the August 17, 2006, Order entered by Judge Klein.

IT IS SO ORDERED.

Dated this ____ day of October, 2006.

BOARD MEMBER

c: Joseph Seiwert, Attorney for Claimant
Jeffery R. Brewer, Attorney for Respondent and its Insurance Carrier
Thomas Klein, Administrative Law Judge